

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OAKTREE INVESTMENTS,
INC.,) Case No. SA CV 15-01887-JVS (KESx)
Plaintiff,)
vs.) ORDER REMANDING CASE TO
VALERIE A. LOPEZ,) STATE COURT
DOES 1-5,)
Defendants.)

The Court *sua sponte* REMANDS this action to the California Superior Court for the County of Orange for lack of subject matter jurisdiction, as set forth below.

On November 13, 2015, Valerie A. Lopez (hereinafter referred to as “Defendant”), having been sued in an unlawful detainer action in California state court, lodged a Notice of Removal of that action in this Court (“Notice”) and also presented an application to proceed *in forma pauperis*. (Dkt. Nos. 1,3.) In the Notice, Defendant contends that she has been “denied equal and civil protection under the law.” (Dkt. No.1 at 2.¹) Specifically, Defendant contends that Plaintiff has violated her rights under 42 U.S.C. §§ 1981, 1982, 1985 and 1986. (Id.)

¹ All citations to the Notice are to the CM/ECF pagination.

1 “The right of removal is entirely a creature of statute and ‘a suit commenced in
 2 a state court must remain there until cause is shown for its transfer under some act of
 3 Congress.’” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32 (2002)
 4 (quoting Great Northern R. Co. v. Alexander, 246 U.S. 276, 280 (1918)). Where
 5 Congress has acted to create a right of removal, those statutes are strictly construed
 6 against removal jurisdiction. Id.; Nevada v. Bank of America Corp., 672 F.3d 661,
 7 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

8 Unless otherwise expressly provided by Congress, a defendant may remove
 9 “any civil action brought in a State court of which the district courts of the United
 10 States have original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249, 1252
 11 (9th Cir. 2013). The removing defendant bears the burden of establishing federal jurisdiction.
 12 Abrego v. Dow Chemical Co., 443 F.3d 676, 682 (9th Cir. 2006); Gaus, 980 F.2d at
 13 566-67. “Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant
 14 to that

15 provision, [the removing defendant] must demonstrate that original subject-matter
 16 jurisdiction lies in the federal courts.” Syngenta Crop Protection, 537 U.S. at 33. Failure to
 17 do so requires that the case be remanded, as “[s]ubject matter jurisdiction may not be
 18 waived, and . . . the district court must remand if it lacks jurisdiction.” Kelton Arms Condo.
 19 Owners Ass’n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). “If at any time
 20 before final judgment it appears that the district court lacks subject matter jurisdiction, the
 21 case shall be remanded.” 28 U.S.C. § 1447(c). It is “elementary that the subject matter
 22 jurisdiction of the district court is not a waivable matter and may be raised at anytime by
 23 one of the parties, by motion or in the responsive pleadings, or sua sponte by the trial or
 24 reviewing court.” Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

25 **A. Federal Question Jurisdiction**

26 The underlying action is an unlawful detainer proceeding, arising under and
 27 governed by the laws of the State of California. The state-court Complaint does not include
 28 any claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C.

1 § 1331. Federal defenses or federal counterclaims do not provide a basis to remove an action
 2 which does not otherwise establish federal jurisdiction. “[T]he existence of federal
 3 jurisdiction depends solely on the plaintiff’s claims for relief and not on anticipated defenses
 4 to those claims.” ARCO Envtl. Remediation, L.L.C. v. Dept. of Health and Envtl. Quality, 213
 5 F.3d 1108, 1113 (9th Cir. 2000). An “affirmative defense based on federal law” does not
 6 “render[] an action brought in state court removable.” Berg v. Leason, 32 F.3d 422, 426 (9th
 7 Cir. 1994). A “case may not be removed to federal court on the basis of a federal defense . . .
 8 even if the defense is anticipated in the plaintiff’s complaint, and even if both parties admit
 9 that the defense is the only question truly at issue in the case.” Franchise Tax Bd. v.
 10 Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983). There is no basis for federal
 11 question jurisdiction.

12 **B. Diversity Jurisdiction**

13 There is also no basis for diversity jurisdiction. Every defendant is not alleged to be
 14 diverse from every plaintiff. 28 U.S.C. § 1332(a). The Complaint does not allege damages in
 15 excess of \$75,000, and Defendant has not shown, by a preponderance of the evidence, that
 16 the amount in controversy requirement has been met. Id.; Abrego Abrego, 443 F.3d at 683.
 17 It is also apparent from the state-court records that the underlying unlawful detainer action
 18 is a limited civil action that does not exceed \$10,000. (Dkt. No.1 at 2, 6-19.) The action is not
 19 removable on diversity grounds because Defendant appears to be a citizen of California, where
 20 the action was filed. 28 U.S.C. § 1441(b)(2) (stating that removal is not allowed if “any of the
 21 parties in interest properly joined and served as defendants is a citizen of the State in which
 22 such action is brought”).

23 **C. 28 U.S.C. § 1443**

24 Section 1443(1) permits a defendant in state cases to remove the proceedings to the
 25 federal district courts when a defendant is denied or cannot enforce in the courts of such
 26 State a right under any law providing for the equal civil rights of citizens in the United
 27 States. In order to successfully remove, the defendant must satisfy a two-prong test: 1) the
 28 rights allegedly denied must arise under a federal law providing for specific civil rights stated

1 in terms of racial equality; and 2) the defendant must be denied or unable to enforce the
2 rights in state courts. Johnson v. Mississippi, 421 U.S. 213, 219 (1975); City of Greenwood,
3 Miss. v. Peacock, 384 U.S. 808, 827-28 (1966); Georgia v. Rachel, 384 U.S. 780, 792 (1966).
4 Under the first prong, constitutional or statutory provisions of general applicability or under
5 statutes not protecting against racial discrimination will not suffice. Johnson, 421 U.S. at
6 219. Under the second prong, a defendant's federal rights are left to the state courts except
7 in rare situations where it can be clearly predicted that those rights will inevitably be denied
8 by the very act of bringing the defendant to trial in state court. Peacock, 384 U.S. at 828.

9 While a violation of 42 U.S.C. §§ 1981, 1982 and 1985 may satisfy the first prong of this
10 test, Defendant cannot satisfy the second. Defendant alleges that she is being deprived of her
11 rights to "equal and civil protection under the law." (Dkt. No. 1 at 2.) However, these bare
12 assertions are insufficient to invoke the Court's jurisdiction. Defendant "must
13 assert that the state courts will not enforce [a specified federal] right, and that allegation
14 must be supported by reference to a state statute or a constitutional provision that purports
15 to command the state courts to ignore the federal rights." People of State of California v.
16 Sandoval, 434 F.2d 635, 636 (9th Cir. 1970). Defendant has failed to identify any specific
17 state statute or constitutional provision that commands the state courts to ignore her federal
18 rights. See HSBC Bank USA v. Kubik, No. 13-1692, 2013 WL 1694670, at *3 (C.D.
19 Cal. Apr. 16, 2013) ("Defendant Kubik does not, and cannot, identify any California state law
20 or constitutional provision that commands state courts to ignore an amendment to the U.S.
21 Constitution."). Moreover, the allegations she does make are entirely conclusory in nature.
22 Section 1443(1) will not provide jurisdiction where allegations of discrimination are
23 conclusory and lacking factual basis. See Bogart v. California, 355 F.2d 377, 380-81 (9th
24 Cir. 1966). Consequently, removal is not proper under § 1443(1).

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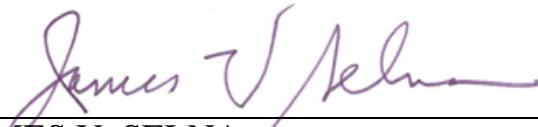
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3 **D. Conclusion**

4 This Court does not have subject matter jurisdiction over this case. IT IS THEREFORE
5 ORDERED that this matter be REMANDED to the Superior Court of the State of
6 California for the County of Orange.

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8 DATED: November 18, 2015

9 
10 JAMES V. SELNA
11 UNITED STATES DISTRICT JUDGE

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